

REMARKS

Claims 22, 26, and 29 have been amended. The amendments find support in the claims and the specification. Specifically, amendments to claims 22, 26, and 29 find support in paragraph 17 of the specification. The newly added claims 48-50 find support in previous claim 18. It is submitted that no new matter has been added to the instant application. Claims 18-47 have been rejected. New claims 48-50 have been added. Claims 18-50 are currently pending.

In a teleconference with the Examiner on May 23, 2005, claims 18-47 were discussed. Although no official agreement regarding allowable subject matter was reached, the Examiner agreed to reconsider the claims in view of the recitation of starch in all claims and the arguments in support thereof. Applicants respectfully submit that the claims as amended are in condition for allowance, and Applicants respectfully traverse the rejections for the reasons expressed herein below.

A. Rejection of claims 18-47 under 35 U.S.C. § 103(a)

The Examiner has rejected claims 18-47 under 35 U.S.C. § 103(a) for obviousness over United States Patent No. 4,603,143 to Schmidt ("Schmidt"). Specifically, the Examiner asserts that Schmidt discloses vitamin powders which are more free-flowing and stable than conventional vitamin powders, the composition comprising at least one fat-soluble vitamin material and a silicon containing material, which thereby renders obvious the claims of the present invention.

To establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the combination of prior art. MPEP § 2143.03.

Applicants respectfully submit that Schmidt does not render obvious claims 18-47 of the present invention (or newly added dependent claims 48-50) because in addition to the distinctions previously set forth, starch is not disclosed in the instant reference. Indeed, Schmidt teaches away from using starch, and, therefore, cannot form the basis of a *prima facie* obviousness rejection as asserted by the Examiner.

Specifically, Schmidt teaches that “ the various processes of the prior art which involve the use of water and emulsifiers, such as gelatin and starch...are unnecessary to the process of the [Schmidt] invention.” U.S. Patent No. 4,603,143, column 2, lines 39-42. In fact, this is the only reference to starch in Schmidt. In contrast, the instant invention demonstrates that adding starch to vitamin compositions is highly advantageous, because in part, it aids in the free flowing characteristics of the composition, with larger additions of vitamin possible (up to 80% as opposed to Schmidt's 40-60%). See Examples 3-6. These advantageous properties are not taught or suggested by Schmidt. Indeed, one of skill in the art reading Schmidt would consider it "unnecessary" to employ starch in the composition and therefore, would not be motivated to add starch in any amount, thereby failing to attain the advantages provided by the claimed invention. *Id.* Thus, because not all of the elements of the instant invention are taught by the reference, and in fact, the reference teaches away from the claimed invention, the rejection is respectfully traversed.

For at least the reasons discussed above, Applicants respectfully request reconsideration of the rejections of the claims 18-47 for obviousness over Schmidt.

Applicants believe that claims 18-50 define over the prior art of record and are in proper form for allowance. Applicants respectfully request allowance of claims 18-50.

If the undersigned can be of assistance to the Examiner regarding any of the above, please contact the undersigned at the number set forth below.

Respectfully submitted,



C. Allen Black
Reg. No. 53,835
Customer No. 41,835

Date

KIRKPATRICK & LOCKHART Nicholson Graham LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, Pennsylvania 15222

Telephone: (412) 355-6319
Facsimile: (412) 355-6501